

From: Keith Takata
To: [Armann, Steve](#)
Subject: Fwd: REPA Draft Conditions for Approval of LBNL Original Application - Response to LBNL's Proposed Changes
Date: Tuesday, April 26, 2016 10:42:18 AM

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ATTORNEY-CLIENT PRIVILEGE

Keith Takata
Takata Environmental LLC
keith@keithtakata.com
650-862-1162
www.keithtakata.com

Begin forwarded message:

From: Joseph Gantos <njgantos@lbl.gov>
Date: April 26, 2016 at 9:31:01 AM PDT
To: Keith Takata <keith@keithtakata.com>
Subject: Re: REPA Draft Conditions for Approval of LBNL Original Application - Response to LBNL's Proposed Changes

Keith,

Please share with Steve. Many thanks.

Carmen's Language:

EPA Clarification April 22, 2016: A temporary or final cap would have to be addressed in the LUC. A condition has been added to the Approval addressing this matter and includes further discussion of the LUC content with EPA.

EPA Clarification April 22, 2016: A land use covenant is required in EPA's Approval of the Application.

LBNL's:

Text has been added to this section referencing Section 13. LBNL acknowledges the need to coordinate with DTSC and EPA should a land use covenant be required.

LBNL understands that the design of a temporary cap, an operations and maintenance plan, and the time frame to establish a final remedy would be discussed with EPA. LBNL does not believe a land use covenant is appropriate for a temporary cap, since we believe the Site would remain under active oversight by EPA until a final remedy is established.

LBNL understands that if the project site is not cleaned up to levels that are shown acceptable for unrestricted land use, the use of the property may be restricted and a soil management plan required. LBNL also understands that if a cap were necessary, operation and maintenance of the cap would be required in perpetuity. LBNL would like to discuss with EPA further the land use restrictions.

On Tue, Apr 26, 2016 at 6:58 AM, Keith Takata <keith@keithtakata.com> wrote:

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I just read the attached email exchange. Because of the time crunch, you may be better off with a direct appeal (under the agreement that you signed with EPA). You could tell Carmen that LBNL would like to have a conference call on the subject of LUCs that includes both Steve and Carmen and that LBNL would like Carmen to hold postpone the clarifications until after the conference call. This is also a subject that might be helped by getting attorneys from both sides involved. Let me know what you think.

Keith

Keith Takata

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keith@keithtakata.com

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www.keithtakata.com

On Apr 26, 2016, at 5:36 AM, Joseph Gantos <njgantos@lbl.gov> wrote:

Good morning, Keith,

I'd like you to give Steve a call first thing this morning to remove this LUC requirement from the Application approval. I'm not sure if Carmen is pushing for this or EPA legal staff. Regardless, **WHEN and IF** we don't achieve our cleanup goals and an LUC is required, then it's a fair game to sit down with EPA and discuss.

Feel free to contact me or Bod D with any questions.

Please report back on your discussions. This requirement is problematic for us.

Thanks,

Joe

----- Forwarded message -----

From: **Joseph Gantos** <njgantos@lbl.gov>

Date: Tue, Apr 26, 2016 at 5:29 AM

Subject: Re: REPA Draft Conditions for Approval of LBNL
Original Application - Response to LBNL's Proposed Changes

To: "Santos, Carmen" <Santos.Carmen@epa.gov>, "Armann,
Steve" <armann.steve@epa.gov>

Cc: Bob Devany <ROD@weiss.com>, Ron Pauer
<ropauer@lbl.gov>, Robert Cronin <rdcronin@lbl.gov>, Dottie
<dottie@savagelogistics.com>, "Kennedy, Christina"
<CKennedy@northstar.com>, Keith Takata
<keith@keithtakata.com>, "Bazzell, Kevin"
<kevin.bazzell@emcbc.doe.gov>

Hi Carmen,

To meet your morning deadline (April not August :), please
consider these comments:

- LUC should not be a rigid requirement of the Approval.
When we discussed a potential LUC with our legal
counsel, they only agreed to the following language
(RTC #87):

*[LBNL understands that if the project site is not cleaned
up to levels that are shown acceptable for unrestricted
land use, the use of the property may be restricted and
a soil management plan required. LBNL also
understands that if a cap were necessary, operation
and maintenance of the cap would be required in
perpetuity. LBNL would like to discuss with EPA further
the land use restrictions.](#)*

Therefore, once the cleanup is complete and **IF an
LUC is required**, then LBNL/DOE would like the
opportunity to discuss with EPA. Please delete the LUC
as a requirement as we'll have the chance to discuss if
we don't meet our cleanup objectives.

- EPA's clarification that a temporary cap should be
addressed in a LUC is a bit problematic for us for the
same reasons (Comment 48) and warrants further
discussion. Suggest deleting.
- We're a bit confused by EPA's clarification in Comment

33, "Sample-by-sample comparisons to the cleanup goal are not part of that decision tree." This is potentially a problem for us since we rely on the sample-by-sample comparison in the Application for verification. Please provide the approval conditions and verification decision tree as several of your clarifications refer to these.

I'm in a meeting all day but will keep an eye on email. I wanted to get you this feedback before my 8 a.m. meeting. If I receive any additional feedback, I'll let you know.

Thanks,

Joe

On Mon, Apr 25, 2016 at 3:00 PM, Santos, Carmen
<Santos.Carmen@epa.gov> wrote:

Hello Joe:

Thank you for the clarification regarding the table.

Attached is the same table. It is a little discombobulated because I added certain clarifications under several LBNL responses. The title "EPA Clarifications April 22, 2016" is highlighted in yellow and the clarification is beneath the LBNL response.

Also, because we will be issuing the approval of the amendment later, I have added clarifications beneath LBNL's responses in the table about changes to the original Application text that say the Application is modified by the text in LBNL's response. Yours and your team's review of the clarifications is greatly appreciated. I intend to send the clarifications in final by August 26 in the morning, if you have no issues. I want to reference the email sending the final clarifications in the Approval cover letter so we can finally issue the Approval.

Regarding the 21,000 gallon tanks, I appreciate LBNL's quick review of the draft condition of approval. If I have a few comments that I will send to you soon.

Best,

Carmen

Carmen D. Santos

PCB Coordinator

USEPA Region 9 (LND-4-1)

Land Division

75 Hawthorne Street

San Francisco, CA 94105

Voice: [415.972.3360](tel:415.972.3360)

santos.carmen@epa.gov

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From: Joseph Gantos [mailto:njgantos@lbl.gov]

Sent: Sunday, April 24, 2016 6:14 AM

To: Santos, Carmen <Santos.Carmen@epa.gov>

Subject: Re: REPA Draft Conditions for Approval of LBNL Original Application - Response to LBNL's Proposed Changes

Hello Carmen,

In those instances where the table indicated "the text has been revised," LBNL already submitted the revised sections to you on March 25, 2016, as part of the Application Amendment.

Please let me know if you need anything else.

Thanks,

Joe

On Fri, Apr 22, 2016 at 4:21 PM, Santos, Carmen

<Santos.Carmen@epa.gov> wrote:

Hello Joe:

This message is regarding the Table containing the responses to my comments on the original Application. Several of the responses state "the text has been revised" Is LBNL submitting any revisions to specific sections of the Application or is the response to the comment on a specific section the revision to that section? A clarification would be most appreciated.

Best,

Carmen

Carmen D. Santos

PCB Coordinator

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75 Hawthorne Street

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santos.carmen@epa.gov

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From: Joseph Gantos [<mailto:njgantos@lbl.gov>]

Sent: Wednesday, April 20, 2016 11:32 AM

To: Santos, Carmen <Santos.Carmen@epa.gov>
Subject: Re: REPA Draft Conditions for Approval
of LBNL Original Application - Response to
LBNL's Proposed Changes

Hi Carmen,

Here's the Word file for the table you requested.

Thanks again for the call and clarifications
yesterday. We're clear on what needs to be done
and we should finalize the letter (via email) to
you soon. As we discussed, we're also planning
to start the work when we submit the letter
which should help us stay on schedule to
relocate the GWTS.

Please let me know if you need anything else.

Best regards,

Joe

On Wed, Apr 20, 2016 at 9:57 AM, Santos,
Carmen <Santos.Carmen@epa.gov> wrote:

Hello Joe:

In early April 2016, LBNL sent a table that
responded to my comments on the
Application. I have clarifications to add
concerning several responses by LBNL. Is it
possible to get an electronic copy of the Table
in Word? If that is possible, I would then add
my clarifications straight into the table. I want
to send the clarifications out to you by
Monday April 25 at latest and having the
table electronically would expedite sending
the clarifications.

Thank you for your help.

Sincerely,

Carmen

Carmen D. Santos

PCB Coordinator

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From: Joseph Gantos

[mailto:njgantos@lbl.gov]

Sent: Wednesday, April 13, 2016 12:58 PM

To: Santos, Carmen

<Santos.Carmen@epa.gov>

Cc: Robert Cronin <rdcronin@lbl.gov>;
Bazzell, Kevin

<kevin.bazzell@emcbc.doe.gov>; Ron

Pauer <ropauer@lbl.gov>; Keith Takata

<keith@keithtakata.com>; Robert O.

Devany <ROD@weiss.com>; Armann,

Steve <Armann.Steve@epa.gov>

Subject: Re: REPA Draft Conditions for
Approval of LBNL Original Application
- Response to LBNL's Proposed
Changes

Hi Carmen,

We truly appreciate you considering
our proposed changes and your efforts
in moving this process to the next

approval step.

On the decontamination issue or Condition 3, I went back and checked our meeting notes from the March meeting. I really thought we resolved this issue in March. Here's the verbiage from the notes for easy reference.

"Application for Cleanup of PCBs for Buildings 52, 52A, and Electrical Pad

LBNL submitted the initial Application for Cleanup of PCBs covering Buildings 52 and 52A, and the

electrical pad to EPA on February 22, 2016. LBNL called attention to two items in the submittal:

- In Section 5.3.2, LBNL is requesting a 90-day extension for waste storage.

- In Section 4.8, LBNL is proposing to decontaminate movable equipment using a more

environmentally friendly decontamination method that does not use hazardous solvents.

After cleaning, decontamination will be verified by collecting wipe samples and analyzing for

PCBs. If the samples contain PCBs, LBNL will decontaminate the movable equipment again using

either more detergent or solvents until PCBs are detected at concentrations less than or equal

to 10 micrograms per 100 square centimeters (10 µg / 100 cm²) based on wipe sample results.

The equipment will remain at the project site until acceptable results are obtained. With this

explanation, Ms. Santos indicated that she is in agreement with LBNL's proposal."

In any case and if it's not too late, we'd like to discuss this further on Friday, if possible. We're finalizing the Draft agenda and I'll send it your way soon.

Best regards,

Joe

On Wed, Apr 13, 2016 at 11:00 AM, Santos, Carmen
<Santos.Carmen@epa.gov> wrote:

Hello Joe and Robert:

I have reviewed LBNL's suggested changes to draft conditions that I have shared with you and that will be included in EPA's approval of the original Application. LBNL's email transmitting those changes is attached for your reference when reviewing this message.

The suggested changes to Condition 3 (decontamination of construction equipment) cannot be made as proposed. 40 CFR 761.79(h)(2) requires that:

"40 CFR 761.79(h)(2): Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for decontamination activity occurring in more than one EPA Region. Each

application must describe the material to be decontaminated and the proposed self-implementing decontamination method and must include a proposed validation study to confirm performance of the method.”

EPA cannot approve an alternate decontamination procedure before it is demonstrated that it works or the validation study sample results show the alternative method is efficient at removing the PCBs at the required decontamination standard. In my opinion, LBNL should conduct its validation study as soon as it starts the remediation work and provide the results of that short and straightforward validation study (including wipe sample results) for EPA review and approval of the alternate decontamination procedure. No correlation exists between ppm levels of PCBs in bulk PCB remediation waste and non-porous surface PCB concentrations in ug/100 cm sq. In addition, please note that LBNL’s Application does not provide a description of how many wipe samples will be collected from each piece of equipment that LBNL wants to decontaminate using an alternate decontamination procedure. I will modify Condition 3 and not as proposed by LBNL given the explanations provided here. The modified Condition 3 will include language in a like manner to that in the highlighted sentence. I believe that such language is a good compromise.

In finalizing the other draft conditions for the approval, I am taking in very serious consideration your proposed changes.

Thank you for your courtesies and

feedback on the draft conditions of approval.

Sincerely,

Carmen

Carmen D. Santos

PCB Coordinator

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santos.carmen@epa.gov

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From: Robert O. Devany
[mailto:ROD@weiss.com]
Sent: Wednesday, April 13,
2016 9:28 AM

To: Santos, Carmen
<Santos.Carmen@epa.gov>;
Robert Cronin
<rdcronin@lbl.gov>
Cc: Bazzell, Kevin
<kevin.bazzell@emcbc.doe.gov>; Joseph Gantos
<njgantos@lbl.gov>; Ron
Pauer <ropauer@lbl.gov>;
Keith Takata
<keith@keithtakata.com>
Subject: RE: LBNL Original
Application - Draft Approval -
Contact Information for Letter

Hi Carmen,

On behalf of Joe Gantos, I am forwarding LBNL's feedback on the draft conditions of approval provided by EPA on April 11. We have formatted the response in MS Word using track changes. You should view the responses in the menu option for track changes/all markup.

Thank you for your support on the project and please contact Joe Gantos if you have any questions on the responses.

Bob Devany, P.G., C.E.G,
C.Hg
Principal Hydrogeologist

Weiss Associates
2200 Powell Street, Suite
925
Emeryville, CA 94608

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From: Santos, Carmen
[<mailto:Santos.Carmen@epa.gov>]

Sent: Wednesday, April 13, 2016 9:12 AM

To: Robert Cronin
<rdcronin@lbl.gov>

Cc: Bazzell, Kevin
<kevin.bazzell@emcbc.doe.gov>; Joseph Gantos
<njgantos@lbl.gov>; Robert O. Devany

<ROD@weiss.com>; Ron Pauer <ropauer@lbl.gov>; Keith Takata
<keith@keithtakata.com>

Subject: RE: LBNL Original Application - Draft Approval - Contact Information for Letter

Hello Robert:

I believe the contacts that you mentioned in your message signed the written certification for the amendment to the Application. Our regulations require the written certification be signed by the owner of the property and the cleanup party. So, I will address the Approval to

Kevin Bazzell (DOE) and Glenn Kubiak (LBNL). If someone could provide the full titles and addresses for these two gentlemen, I would greatly appreciate it.

I am completing the approval this morning and cannot wait any longer for LBNL's feedback (if any) on the few draft conditions of approval that I sent for your review. This excludes the conditions on cleanup verification data review using the ProUCL software.

It seems that cleaning of the tanks may need to have further discussion. The draft condition will be finalized as is so I can get this Approval out the door. However, our Approvals contain language that allow EPA to modify conditions if modifications are requested by the cleanup party and EPA agrees to the proposed modification or both parties mutually agree to an alternate modification.

I also want to note that after EPA issues its approval of the original Application, the approval of LBNL's amendment to the Application will follow within two to three weeks.

Thank you for your courtesies and please call or write if you have any questions concerning this message.

Sincerely,

Carmen

Carmen D. Santos

PCB Coordinator

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From: Robert Cronin
[mailto:rdcronin@lbl.gov]

Sent: Wednesday,
April 13, 2016 7:21
AM

To: Santos, Carmen

<Santos.Carmen@epa.gov>

Cc: Bazzell, Kevin
<kevin.bazzell@emcb.c.doe.gov>; Joseph Gantos

<njgantos@lbl.gov>;

Bob Devany

<ROD@weiss.com>;

Ron Pauer

<ropauer@lbl.gov>

Subject: Re: LBNL
Original Application -
Draft Approval -
Contact Information
for Letter

Hi Carmen,

As Joe points out,
the approval letter
would be addressed
to Kevin Bazzell and
me; however the
Owner's
representative and
the Operator's
representative are
slightly different.
Glenn Kubiak
(LBNL) represents
the Regents of the
University of
California who are
the land owners.
Kevin Bazzell
represents the DOE
as the operator of the
facility on the UC
property. (DOE then
contracts operations
to back to LBNL.) It
get's confusing, but I
hope this helps.

Thanks,

Bob

On Tue, Apr 12,
2016 at 3:28 PM,
Joseph Gantos

[<nigantos@lbl.gov>](mailto:nigantos@lbl.gov)

wrote:

Hi Carmen,

I looked up our
submittal letters to
you and they were
signed by Robert
Cronin and Kevin
Bazzell. Hence, I
suggest Robert
Cronin for LBNL
and Kevin Bazzell
for DOE.

I copied Bob and
Kevin in case they
have any input on
your request.

Thanks,

Joe

On Tue, Apr 12,
2016 at 2:23 PM,
Santos, Carmen
<[Santos.Carmen@
epa.gov](mailto:Santos.Carmen@epa.gov)> wrote:

Hello Joe:

Thank you for
your message
letting me
know that
LBNL is
reviewing the
draft
conditions of
approval.

I appreciate
your help in
confirming the
LBNL and DOE
persons to
whom EPA
should address
the approval
of the original

Application. I would need the name of the cleanup parties, which would be the persons representing LBNL and DOE as the operator of the facility and owner of the facility, respectively.

The approval of the Application amendment will be issued separately.

Sincerely,

Carmen

Carmen D.
Santos

PCB Coordinator

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Land Division

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santos.carmen@epa.gov

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--

Joseph Gantos

[510.486.5077](tel:510.486.5077)
(desk)

[720.810.7723](tel:720.810.7723)
(cell)

--

Bob Cronin

Project Director

[510.495.2849](tel:510.495.2849) (desk)

[303.550.5480](tel:303.550.5480) (cell)

--

Joseph Gantos

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